The Planning Inspectorate

Appeal Decision

Hearing held on 23 February 2023

Site visit made on 23 February 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2023

Appeal Ref: APP/C1435/W/21/3277573
Land adjacent to 189 Coast Road, Pevensey Bay, East Sussex BN24 6NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by J Lee (RDB Holdings Ltd) against the decision of Wealden District Council.
- The application Ref WD/2021/0492/F, dated 19 February 2021, was refused by notice dated 19 May 2021.
- The development proposed is the change of use from commercial to residential and the erection of 3 bed chalet style bungalow.
- This decision supersedes that issued on 3 March 2022. That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal is a redetermination following the quashing of the previous appeal decision. I have had regard to the previous appeal, where material.

3. The planning application was refused for two reasons, its flood risk impacts and the effect of the proposal on the character and appearance of the area. On this latter issue, the previous Inspector determined that the development would have an acceptable impact and found that it complied with the relevant development plan policies. The Council has accepted this conclusion and does not wish to defend the second reason for refusal.

4. Having regard to the mixed character of properties in the surrounding built-up area and the design and appearance of the proposed dwelling, I agree that the scheme would not be harmful to the character and appearance of the area. Consequently, it is not necessary to consider this matter further as a main issue in this appeal.

Main Issue

5. The main issue is whether or not the site would be a suitable location for the development having regard to its flood zone location, and the provisions of the development plan and national policy with regard to flood risk.

Reasons

6. The site is a reasonably slim section of mainly open and level land that fronts onto Coast Road. It has a small collection of timber shed like buildings at one

end and benefits from a planning permission for the storage/car parking for 19 cars. The site is located within the settlement area of Pevensey Bay and the surroundings are almost exclusively residential. The scheme would result in the removal of the present use and the collection of sheds, and the replacement with a single chalet like dwelling, garden and parking area.

7. The site lies within Flood Zone 3a (high probability) and is identified as liable to flood from both sea and fluvial flooding. The shingle bank along the coast provides a defence against tidal flooding, but as local water courses are constrained from discharging naturally other than at low tide there remains a risk of fluvial flooding.

8. The National Planning Policy Framework (the Framework) explains that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. When deciding on whether a proposal is acceptable in a location at risk of flooding, it is necessary to undertake a sequential test and, if this is passed, to then consider the exception test.

9. The Framework details that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The Planning Practice Guidance (the Guidance) provides advice on how the sequential test should be applied to planning applications. This includes that for individual planning applications subject to the sequential test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. The Guidance indicates that for some developments this may be clear, for example, the catchment area for a school.

10. In other cases, the Guidance explains the catchment may be identified from other Plan policies, for example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives.

11. Pevensey Bay is identified as a Local Service Centre within the settlement hierarchy in the Wealden Core Strategy Local Plan (February 2013) (the Core Strategy). Local Service Centres are defined as settlements that have a more limited supply of social and economic infrastructure including employment and where local residents depend on other centres to meet a broad range of needs with some form of accessibility to those centres.

12. This accords with the information I heard at the hearing. Whilst Pevensey Bay has, for instance, some shops and other businesses, a GP surgery and tourist accommodation, it is necessary for residents to travel to nearby Eastbourne to undertake a larger convenience store shop and for secondary school pupils to access education. Primary Schools are located outside Pevensey Bay, with one such school at Westham. It seems to me that Pevensey Bay, therefore, has elements of local services that assist with reducing the need for residents to travel but has a relationship with and relies on adjoining areas and communities to meet a wider range of its needs.

13. The Core Strategy sets out the approach to development in the rural area settlements. Policy WSC6 of the Core Strategy confirms that development boundaries will be retained for listed settlements and this includes Pevensey Bay. The Policy indicates that provision will be made for at least 455 new dwellings and allocates these additional dwellings to named settlements. Pevensey Bay is not listed as a settlement that has been allocated additional residential development in terms of Policy WSC6, although within the development boundary of Pevensey Bay new housing is acceptable as a matter of principle.

14. In terms of the flood zones, the vast majority of Pevensey Bay lies within Flood Zone 3. This flood zone extends inland quite a way and along the coast although there are parts of settlements and/or built up areas that fall within Flood Zone 1. These include parts of the wider built-up area of Eastbourne and sections of Pevensey and Westham.

15. Furthermore, there are also, and which was agreed at the hearing[1], small pockets of land within Pevensey Bay which fall within Flood Zone 1. I have noted the comments from the appellant that he has investigated development opportunities including with local property agents in the area and all the sites are constrained by Flood Zone 3 and that the Parish Council has no knowledge of any development opportunities which are not constrained. However, I am not aware of any detailed analysis or clearly documented evidence before me of the small number of pockets of Flood Zone 1 land within Pevensey Bay and their potential for redevelopment or intensification for residential use.

16. Also, it does not appear that the extent of Flood Zone 3 provides a complete restriction to the provision of additional residential units/floorspace in Pevensey Bay. For instance, the appeal decision at Wallsend House[2] allowed an additional residential unit within an office space and I was told that following the refusal of the scheme at appeal at The Moorings[3] the building has been granted planning permission to be converted to a dwelling, albeit that the upper floors were in residential use. Consequently, despite the flood zone situation, there are some limited opportunities within Pevensey Bay that allow additional dwellings/floorspace to be delivered and which could help sustain the existing community.

17. It seems to me while the Parish Council make the case that the situation and community at Pevensey Bay is unique, the settlement operates largely as expected as a Local Service Centre, in association with the larger and other settlements in the wider area. Facilities and services are used in Pevensey Bay by residents and also further afield because the settlement provides the limited range that it does. This is also confirmed by the travel to work areas which show that Eastbourne is a main centre of employment for residents of the area.

18. In terms of the sequential test, it is necessary to consider what should be the appropriate catchment for a new build open market dwelling, which is the type of development proposed in this appeal. The Framework is clear that the development should not be permitted if there is reasonably available sites appropriate for the proposed development in areas with a lower risk of

[1] From looking at the Level 1 SFRA Appendix C – Flood Zone Mapping – within the Council's appeal statement.
[2] APP/C1435/W/21/3285807 – Wallsend House, Richmond Road, Pevensey Bay BN24 6AU – dated 22 December 2022
[3] APP/C1435/W/22/3299553 – The Moorings, Seaville Drive, Pevensey Bay BN24 6AP – dated 19 December 2022

flooding. I am not satisfied that the catchment area for the consideration of the provision of open market dwellings should be confined to just the settlement of Pevensey Bay. This includes, as explained above, because of the nature of how Pevensey Bay operates as a Local Service Centre and its interrelationship to adjoining settlements and their services and facilities. Furthermore, the spatial strategy does not allocate development to Pevensey Bay under Policy WSC6 of the Core Strategy and some additional housing/floorspace has been shown to be possible to be delivered despite the flood zone restraints. Also, the evidence does not clearly show that additional residential development is needed to sustain the existing community over and above the existing development with its local resident and holiday population.

19. It seems to me that housing at other reasonably nearby locations such as within the eastern side of the Eastbourne built up area, or locations such as Westham would provide residents of new residential accommodation with generally similar and reasonable access to the same types of local services and facilities, and employment opportunities, as for residents in Pevensey Bay. In these circumstances, these locations would provide reasonable and appropriate alternatives for open market housing within the catchment area for the type of development proposed. These areas have a lower risk of flooding than the appeal site at Pevensey Bay and there is no clear evidence that housing land is not available. The Guidance explains that the absence of a five year housing land supply is not a relevant consideration for the sequential test for individual applications.

20. While it is legitimate for Councils to consider a district-wide approach to the sequential test, the Guidance recommends that in areas such as this the approach should consider whether the development is needed to sustain an existing community. The Council argue that the Eastbourne Housing Market Area is the most appropriate catchment for the consideration of the type of development proposed, namely open market housing. There is clearly merit in an approach that has an extended area beyond Pevensey Bay itself because of the interrelationship between Eastbourne and the hinterland which, for employment purposes extends up to Hailsham and beyond. Overall, given what I have found and noting that the Housing Market Areas are smaller than the Wealden District area, I consider that the Eastbourne Housing Market Area would be a reasonable catchment to consider for the provision of an open market dwelling and this area would include the closer areas to the appeal site within Flood Zone 1 which I have referenced above.

21. I have noted the analysis in the Flood Risk Assessment[4] submitted with the planning application. The section on the sequential test includes references to the Draft Housing Strategy 2020-2025 as a justification for a dwelling at the appeal site. While this Strategy sets out a need for housing units to be delivered, it does not provide a detailed analysis for the distribution of housing or, in particular, provide a justification for more housing at Pevensey Bay. The Flood Risk Assessment also does not analyse in detail whether or not there are any reasonably available sites for housing elsewhere nor explain satisfactorily why, on the evidence, the catchment should be restricted to Pevensey Bay. In these circumstances, the document does not add meaningfully in favour of the appellant’s case in terms of the sequential test approach.

[4] Flood Risk Assessment – 189 Coast Road, Pevensey Bay – Flume Consulting Engineers – February 2021

22. At the hearing, the Parish Council submitted a substantive and detailed document to support the case that the catchment area for the sequential test should be Pevensey Bay. I have very carefully considered the arguments made in this document and analysed many of the issues above. As I have found, the flood risk situation at Pevensey Bay would not prevent some additional housing/floorspace to be provided, albeit the units are likely to be limited in number, and the existing policies while allowing new housing within the settlement boundary as a matter of principle, does not allocate Pevensey Bay any housing figure whilst it does for some other settlements. I have taken into account the references to the Strategic Flood Risk Assessment 2022 and the arguments that sub-markets exist within the Housing Market Areas. I understand the points that are being made to support the case for Pevensey Bay as a separate catchment for the consideration of housing proposals but I am not satisfied, given the open market nature of the development proposed, that such housing could not be provided reasonably nearby in an area with a lower risk of flooding.

23. A number of appeal decisions for housing in Pevensey Bay have considered the issue of what should be the appropriate catchment area to consider in terms of the sequential test. These previous appeal decisions were determined by written representations and this hearing allowed the opportunity to debate this issue in more detail. The previous appeal decisions are not all consistent and this has led to uncertainty in the approach that should be taken in this case.

24. The Inspector who determined the appeal decision at 164 Coast Road[5] considered that housing was needed in Pevensey Bay to sustain the local community and businesses. This led him to determine that housing elsewhere would not meet a considered local need which would be supported by the settlement hierarchy. The Inspector who determined the quashed decision in this appeal came to a similar conclusion. For the reasons I have set out above, I disagree and that when considering the provision of open market housing a wider catchment for the sequential test should be considered as more appropriate.

25. The Inspector who determined The Holy Rood Catholic Church[6] appeal decision undertook a detailed assessment of the catchment for the sequential test. He came to the conclusion that the sequential test should not be based on the individual settlement of Pevensey Bay and that the Housing Market Area was the appropriate area to consider for the provision of open market housing. The Inspector took into account the findings of the Inspector in the 164 Coast Road decision in coming to his conclusion. I agree with this assessment.

26. With The Moorings appeal decision the Inspector refers to the Housing Market Area and is not satisfied because the Flood Risk Assessment does not assess any other suitable sites in lower flood risk areas outside the appellant's ownership or within the wider area. With the Wallsend House appeal decision the Inspector found that the information on the investigation of alternatives was not satisfactory such that the sequential test was not met in that case[7].

[5] APP/C1435/W/19/3240856 – 164 Coast Road, Pevensey Bay, East Sussex BN24 6NR – dated 27 February 2020
[6] APP/C1435/W/21/3276480 – The Holy Rood Catholic Church, Castle Drive, Pevensey Bay BN24 6JP – dated 14 February 2022.
[7] The Inspector concluded that the sequential test was not required for the conversion of the office to a flat.

27. While these cases provide a variety of residential schemes, they all concern the provision of additional housing in an area at risk of flooding. I have taken all the comments and conclusions into account, and the analysis of the appellant and the Parish Council. It is my judgement, as I have explained above, that for the provision of an individual new build open market dwelling, that the catchment area for the consideration of the sequential test should extend beyond Pevensey Bay and that it would more appropriately be the Housing Market Area. There is a likelihood that there are reasonably available alternative sites elsewhere within the Housing Market Area that are within a lower flood risk zone. It follows that I conclude that the sequential test would not been met. In these circumstances, it is not necessary or appropriate to go onto examine the exception test.

28. At my site visit, my attention was drawn to other dwellings nearby in Coast Road which appear to be fairly recent. While I have noted their presence I do not know the detailed planning history and the flood risk analysis which was undertaken when they were permitted and therefore I attribute their presence limited weight when considering the issues in this appeal.

29. I have noted the finished floor level details for the construction of the dwelling and that it is argued that the development would be safe for its lifetime, although I am not clear that the updated Climate Change Allowances have been taken into account. I also note the shingle ridge is to be continued to be protected which would reduce the potential for coastal flooding and that the Environment Agency do not object to the development, subject to conditions attached to any approval. In respect of this latter matter, at the outset it is for the Local Planning Authority, and in the case of an appeal, the Inspector, to determine the sequential test and I have found it would not be passed in this case.

30. In the light of the above analysis, I conclude the proposal would not pass the sequential test and, therefore, that the site would not be a suitable location for the development having regard to its flood zone location and the provisions of the development plan and national policy with regard to flood risk. In particular, the scheme would conflict with Policy SPO10 and WCS14 of the Core Strategy, saved Policy EN1 of the Wealden Local Plan (1998), the Framework and the Guidance which, amongst other things, set the planning approach and strategy for new development in relation to flood risk.

Planning Balance

31. The Statement of Common Ground confirms that the Council can only demonstrate 3.92 years of housing land supply. However, the presumption in favour of sustainable development, as set out in paragraph 11d of the Framework, would not be engaged because I have found that the scheme would conflict with the Framework policy requirements for the location of development in relation to flood risk. Specifically, in terms of paragraph 11d)i, the flood risk policies in the Framework that protect areas (or assets) of particular importance would provide a clear reason for refusing the development proposed.

32. Consequently, it is necessary to determine the appeal based on the normal planning balance and the decision should be made in accordance with the development plan unless material considerations indicate otherwise[8].

33. The scheme would make a small contribution to housing supply, on a windfall site, and in a Council area that cannot demonstrate a five year supply. The site would be located within an identified settlement, classified as a Local Service Centre, and future occupants would have reasonable accessibility to local services and facilities, and nearby public transport options. There would be economic and social benefits from the construction work and with the subsequent occupation. The scheme would make efficient and effective use of a site which should be considered previously developed land and it is argued that the development, with the proposed levels, would be safe for its lifetime. There may also be ecological benefits from the scheme, replacing the present extent of hard surfaces, which could also help with sustainable drainage, reducing run-off to water courses.

34. The case is made that the removal of the authorised vehicle storage/parking use would be beneficial to the area and the amenities of local residents. An increase in the authorised number of cars allowed to be parked was approved by the Council in 2014. At the present time, the site is somewhat tired in its appearance and would benefit from redevelopment although the resumption of the authorised car parking use would, in my view, not necessarily cause as much material harm to the area as is considered by the appellant and the Parish Council. Overall, the redevelopment would provide a moderate improvement to the visual appearance and character of the area, and for the amenities of those living locally.

35. Drawing all the benefits together, while the development would provide a worthwhile boost to housing supply it would, nevertheless, only deliver a single dwelling and the cumulative benefits of the scheme should afford moderate weight in favour of approval.

36. On the other hand, the development would result in the provision of a dwelling in a location which would fall within Flood Zone 3a, an area classified as having a high probability risk of flooding. The scheme would introduce more residents and a property to the area that would be at risk of flooding and, in the event of a flood, could potentially cause damage to the property and would add to the number of local residents that could be trapped by flood waters and/or may need to be evacuated by the emergency services. That there may be other local properties that could be in the same situation would not justify the provision of a further dwelling with its associated occupants being located within a flood risk area.

37. The Framework is clear that in areas of risk of flooding inappropriate development should be avoided by directing development away from areas of highest risk. In this case, I have found that there are reasonably available sites appropriate for the proposed open market dwelling in areas with a lower risk of flooding and, consequently, the sequential test has not been met. This is a very significant matter that weighs to a substantial extent against the proposal. Planning conditions could not overcome this harm.

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[8] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

38. Drawing all these matters together, the scheme would provide the benefits which I have outlined above and to which I attach moderate weight in favour of approval. The scheme, however, would cause harm because of the flood risk situation and this harm and the related development plan conflict are matters of substantial weight. It follows that the planning balance falls against the scheme and that the proposal would not comply with the development plan when considered as a whole and material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan.

Conclusion

39. For the reasons given above, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr John Lee	Appellant
Mrs Sarah Lee	Appellant’s wife

FOR THE LOCAL PLANNING AUTHORITY

Mr Andrew Battams	Wealden District Council

INTERESTED PARTIES

Cllr Robert Peasgood	Pevensey Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Statement on Behalf of Pevensey Parish Council with supporting documents.